

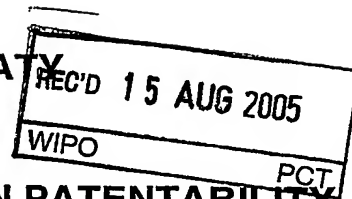
PATENT COOPERATION TREATY


PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference John 10 116099/sko		FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/NO2004/000071		International filing date (day/month/year) 12.03.2004		Priority date (day/month/year) 13.03.2003
International Patent Classification (IPC) or national classification and IPC A01G13/02				
Applicant JOHNSEN, TORFINN				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input checked="" type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 11.01.2005		Date of completion of this report 11.08.2005		
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Bunn, D Telephone No. +49 89 2399-2086		



**INTERNATIONAL PRELIMINARY REPORT
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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-38 as published

Claims, Numbers

1-56 as published

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
 - ☒ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☐ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☒ all parts.
 - ☐ the parts relating to claims Nos. .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-32,34-56
	No: Claims	33
Inventive step (IS)	Yes: Claims	
	No: Claims	1-56
Industrial applicability (IA)	Yes: Claims	1-56
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet.

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

IV. Lack of unity of invention

1. This Authority considers that there are two inventions covered by the claims indicated as follows:

I: Claims 1-32,34-56, concerning a mixture comprising a water-soluble, dried and cut organic raw material, a film or membrane forming thickening agent and a pigment, as well as the use of the mixture;

II: Claim 33, concerning a mixture comprising a pure binder solution consisting of from 95 to 99.7% by weight water and 1% by weight alginate.

It follows that inventions I & II are not so linked as to form a single general inventive concept, as required by Rule 13.1 PCT, in that they lack a common special technical feature defining a contribution over the prior art, as indicated in the search report.

V. Reasoned statement

1. The document numbering (D1-D10) used in the written opinion of the International Search Authority will be adhered to throughout the procedure.
2. WO-A-01 70012 (D1) discloses (see claim 1) a mixture *suitable for* treating a soil surface as specified in the preamble of claim 1, which mixture comprises:
 - a water-soluble, dried and cut organic raw material (p.9, l.12-24);
 - a film or membrane forming thickening agent (p.8, l.7-12); and
 - pigment (p.10, l.5-21);

- wherein at least one component (i.e. lime and shells, p.10, l.10) has sufficient antioxidising effect to ensure that the membrane has an antioxidising effect on the surroundings (see application, p.23, l.10-24).

The mixture of claim 1 thus differs from that of D1 only in that it is a *powder* mixture, the organic raw material having been *ground* rather than *cut*.

This, however, is simply a generally known alternative (cf. US-A-6 029 395, col.7, l.58) in the preparation of a soil treatment mixture, and would be obvious in order, for example, to render the liquid of D1 less susceptible to blockages. It follows that the subject matter of claim 1 fails to involve an inventive step, Article 33(3) PCT.

3. GB-A-903 959 (D8) discloses (see Example I) a mixture comprising a pure binder solution consisting of from 95 to 99.7% by weight water and 1% by weight alginate. While there is no explicit disclosure in D8 that the water component is 95 to 99.7% by weight, it is nevertheless implicit, in view of the quantities of the other components present, that this is in fact the case. It follows that the subject matter of claim 33 fails to meet the requirements of novelty, Article 33(2) PCT.
4. The mixture of D1 (see claim 1) is used to form a solid film or membrane in the surface or at a given depth in a soil mass, as in claims 34-41, 44 & 45 such that the various intended purposes defined in these claims will automatically ensue. Furthermore, as the finished product, i.e. in liquid form, of the claimed mixture and that of D1 will be identical, it follows that the purpose defined in claim 43 will likewise automatically ensue.
The mixture of D1 (see p.5, para.2) is used to re-establish vegetation in areas that have become too hot and dry, as in claim 42.
The mixture of D8 (see p.1, l.60-66) is used to form a solid film or membrane at a given depth in a soil mass, as in claim 45.
It follows that the subject matter of claims 34-45 fails to involve an inventive step, Article 33(3) PCT.
5. The method of D1 (cf. p.2, final para.) differs from those of claims 46-48, 52, 54 & 56 in that:
a) a *powder* mixture is used (claims 46-48, 52, 54, 56);
b) the thickener is xanthan or xanthan gum (claim 46).
As indicated above with respect to claim 1 (see point V.2), feature a) is non-inventive, while feature b) is also considered to relate to a generally known alternative, functioning in its normal way without any surprising effects.
In this respect it is noted that:
- the step whereby additives "such as disclosed in one or more claims..." (claims 46-48, 52, 54, 56) is entirely optional; and
- the step of removing existing vegetation (claims 54, 56) corresponds to a standard ploughing operation, which is implicit in D1.
It follows that the subject matter of claims 46-48, 52, 54 & 56 fails to involve an inventive step, Article 33(3) PCT.

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6. Dependent claims 2-33,49-51,53 & 55 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, in that they relate to slight changes to the mixture of claim 1, or to the methods of claims 47,48,52 or 54, which come within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can readily be foreseen. Consequently, the subject-matter of claims 2-32,49-51,53 & 55 also lacks an inventive step, Article 33(3) PCT

VII. Certain defects in the application

1. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 & D8 is not mentioned in the description, nor are these documents identified therein.